IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 70 OF 1996
With
INCOME TAX REFERENCE NO. 133 OF 1996
With
INCOME TAX REFERENCE NO. 56 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
MEHSANA DIST.CO-OP.MILK PRODUCERS UNION LTD.-Opponent(s)

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Appearance :
MRS. MONA BHATT for MR. MANISH R. BHATT for Applicant(s).
MR. MANISH J. SHAH for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2006

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

This judgement shall dispose of I.T.R. No.70 of

1996, I.T.R No.133 of 1996 and I.T.R. No.56 of 1999.

2. So far as I.T.R. No.70 of 1996 is concerned, at the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench “C”, has referred the following question, arising out of I.T.A. No. 741/Ahd/1991 relating to Assessment Year 1986-87, for the opinion of this Court:

> *“Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.8,86,59,662/- representing alleged additional price of milk on 31-3-1986?”*

3. I.T.R. No.133 of 1996 is a Reference by the Income Tax Appellate Tribunal, Ahmedabad Bench “B” on the following question, arising out of I.T.A. No. 448/Ahd/1991 relating to Assessment Year 1985-86, for the opinion of this Court:

> *“Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow the claim of Rs.8,10,15,754/- claimed to have been representing additional price on milk?”*

4. I.T.R. No.56 of 1999 is in relation to Assessment Year 1988-89 wherein the following question,

arising out of I.T.A. No.444/Ahd/1992, has been referred to this Court for its opinion:

> *"Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT (A) deleting the addition to the extent of Rs.4,63,57,027/- being the alleged additional price towards purchase of milk sanctioned on the last day of the accounting year?"*

5. It is to be noted that M/s.Mehsana District Cooperative Milk Producers Union Ltd. is the Assessee in all the three References. In relation to Assessment Year 1984-85, an identical dispute arose between the parties and at the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "B" referred the following question under Section-256 (1) of the Income Tax Act, 1961 for the opinion of this Court:

> *"Whether, the Appellate Tribunal is right in law and on facts in deleting the addition to the extent of Rs.5,47,69,105/- being the alleged additional price towards purchase price of milk, sanctioned on the last day of the accounting year, i.e., March 31, 1984?"*

In the said matter, the Tribunal had agreed to the contentions raised by the Assessee and directed that the addition of the above referred amount was required to be deleted. The matter was pertaining to Assessment Year 1984-85 and at the instance of the Revenue, a reference was made. In relation to the subsequent years, the Tribunal relied upon its order which it had passed in relation to the Assessment Year 1984-85. When the References were made, the Reference in relation to the Assessment Year 1984-85 was pending consideration before this Court. The said Income Tax Reference No.26 of 1993 has been finally disposed of by a Division Bench of this Court, the said judgement is reported in [***2006***] ***282 I.T.R. 24*** (***Commissioner of Income-Tax vs. Mehsana District Co-operative Milk Producers Union Ltd.***). The High Court, after referring to the legal position, observed that the Tribunal was right in law in deleting the addition by way of disallowance of additional purchase price towards purchase of milk, sanctioned by the Board of Directors on the last day of the Accounting Year.

6. As the question stands concluded between the parties, we are unable to take any view contrary to the view taken by the Division Bench of this Court in the

matter of the very same Assessee. The questions referred to this Court are answered against the interest of the Revenue. All the three References stand disposed of. No costs.

[R.S.Garg, J.]

[M. R. Shah, J.]

*kamlesh**